

15

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 1419 OF 2004
Cuttack, this the 14/5 day of September, 2007

Shyam Sundar Sahoo Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not ?
- 2) Whether it be circulated to the Principal Bench of the Central Administrative Tribunal or not?

(N.D.RAGHAVAN)
VICE-CHAIRMAN

fix for pronouncement --
on 14-09-07 lib
13-09-07

16

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 1419 OF 2004
Cuttack, this the 14th day of September, 2007

CORAM:

HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

.....
Shyam Sundar Sahoo, aged about 39 years, son of Brajabandhu Sahoo,
Village/PO-Mirjipur, P.S.Dharmasala, Dist. Jajpur

Advocate for Applicant	Applicant
Vrs.	Mr.D.K.Patnaik
1. Union of India, represented through General Manager, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist.Khurda.	
2. Divisional Railway Manager, East Coast Railway, Khurda Road, P.O.Jatni, Dist.Khurda.	
3. Divisional Accounts Officer, East Coast Railway, Khurda Road, P.O.Jatni, Dist.Khurda.	Respondents

Advocate for Respondent No.1 -Mr.P.C.Rath, Panel Counsel (Railways)

ORDER

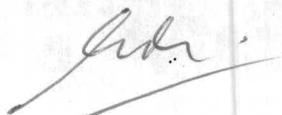
SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

.....
Applicant claims to be son of late Braja @ Brajabandhu Sahoo. His case is that his father late Braja, who was initially appointed as Bridge Khalasi on casual basis on 27.12.1972, conferred with temporary status w.e.f. 1.1.1981 and regularized against PCR post w.e.f. 1.9.1989, retired from Railway service w.e.f. 31.5.1997 (Annexure 2). He passed away on 11.10.1997, vide Death Certificate dated 10.11.1997 (Annexure 1). As per



the calculation sheet (Annexure 2) the pension and family pension were duly paid. The applicant's mother, who was in receipt of family pension, passed away on 18.9.1998, vide death certificate dated 17.11.1998 (Annexure 3). By the date of death of his mother, there were some arrears of pension, family pension and retirement benefits including G.P.F. amount due to be paid by the Respondent-Railways. The applicant obtained the legal heir certificate (Annexure 4) and submitted the same before the Railway authorities for the purpose of disbursement of the aforesaid dues to him. He also submitted a representation on 2.5.2003 (Annexure 5), but to no effect. Being aggrieved by the inaction of the Respondent-Railways, the applicant has filed the present Original Application praying for a direction to the Respondents to release the arrear balance pension/family pension and the GPF amount. He has also prayed for a direction to Respondent No.2 to dispose of his representation dated 2.5.2003 (Annexure 5).within a stipulated period.

2. The Original Application was placed before the Bench on 4.8.2005 when notices were directed to be issued to the Respondents. It was also directed by the Bench that pendency of this Original Application should not stand in the way of the Respondents to release the life time arrear



pension of late Brajabandhu Sahoo (ex-Railway retired employee) and arrears of family pension, etc., to the legal heir.

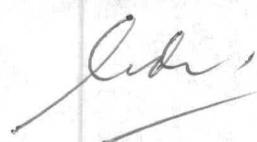
3. Despite grant of repeated opportunities by the Registrar on 10.11.2005, 15.12.2005, 7.2.2006, 21.3.2006, 11.5.2006, 10.7.2006, 30.8.2006, 10.10.2006 9.11.2006, 7.12.2006, 8.1.2007 and 31.1.2007 and by the Bench on 6.2.2007, 15.2.2007, 2.4.2007, 5.4.2007, 20.4.2007 and 24.5.2007, no counter was filed by the Respondents. The matter was placed before the Bench on 20.7.2007 for hearing along with MA No.282 of 2007 purportedly filed by Respondent Nos. 2 and 3 for deletion of their names from the O.A. and for a direction to the applicant to implead the Construction Organization of the Railways as party-Respondent in the O.A.

4. Before proceeding further, it is pertinent to mention here that the applicant has impleaded (1) Union of India represented through General Manager, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, as Respondent No.1; (2) Divisional Railway Manager, East Coast Railway, Khurda Road, Jatni, Dist. Khurda as Respondent No.2; and (3) Divisional Accounts Officer, East Coast Railway, Khurda Road, Dist. Khurda, as Respondent No.3. It is found from the record that Shri P.C.Rath, the learned Panel Counsel (Railways) has appeared for Respondent No.1 by filing Vakalatnama which has not been executed by the said Respondent No.1 but



by one Shri Saroj Kanta Patra, Dy.General Manager, East Coast Railway, Bhubaneswar. Respondent Nos. 2 and 3 have not appeared through Shri Rath. But MA No.282 of 2007 has been filed by Shri P.C.Rath, learned Panel Counsel (Railways) purportedly on behalf of Respondent Nos. 2 and 3 praying for deletion of the names of the said Respondents and for a direction to the applicant to implead the Construction Organization as party-Respondent in this O.A. It is not known as to how the said Respondent Nos. 2 and 3, without entering appearance in this case, can file such an MA with the aforesaid prayer. It is also curious to know how Shri P.C.Rath, Panel Counsel (Railways), who has not entered appearance for the said Respondent Nos. 2 and 3, can file an MA purportedly on behalf of the said Respondents.

5. Perusal of the said MA No. 282 of 2007 reveals that the applicant's father was working in the Construction Organization and the Senior Personnel Officer (Construction), East Coast Railway, Bhubaneswar, is the concerned authority who was/is dealing with the settlement case file in respect of the applicant's father late Brajabandhu, s/o Mathura who was working as Senior Khalasi (Bridge) under the Deputy Chief Engineer (Construction) (D)-II, Bhubaneswar. It has been stated in the said M.A. that the Respondent No.3 vide his letter dated 10.11.2005 sent the service record

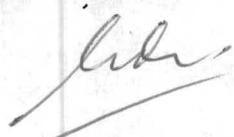


of the applicant's father to the Dy.Chief Personnel Officer (Construction), Bhubaneswar, with a request to prepare the para-wise comments and to take necessary action within the stipulated time. The Senior Personnel Officer (Construction), Bhubaneswar, vide his letter dated 18.11.2005 advised the Senior Divisional Finance Manager, Khurda Road, to request the Divisional Railway Manager (Personnel),Khurda Road to engage a Railway Advocate for conducting the case. Simultaneously, the Senior Personnel Officer (Construction), Bhubaneswar, also requested the Dy.Chief Engineer (Construction) (D)-II, Bhubaneswar, to take further necessary action for arranging payment of life time arrears of family pension and other dues, if any, and also to submit the parawise comments to DRM(P), Khurda Road.

6. From the averments contained in MA No. 282 of 2007 it is clear that Respondent No.3 was the custodian of the Service Record of the applicant's father. After receipt of the notices from the Tribunal in this case, he transmitted the Service Record of the applicant's father to the Senior Personnel Officer (Construction), East Coast Railway, Bhubaneswar in as much as the applicant's father was working in the Construction Organization. The Senior Personnel Officer (Construction) is stated to have moved the Deputy Chief Engineer (Construction) (D)-II, Bhubaneswar, to take further necessary action for arranging payment of life time arrears of



family pension and other dues, if any, and to take necessary action in this case. In view of this, it is illogical on the part of the Respondent Nos.2 and 3 to make a prayer for deleting their names from the O.A. and for directing the applicant to implead the Construction Organization as party-respondent in this O.A. Be that as it may, the Union of India, represented through the General Manager, East Coast Railway, Bhubaneswar, having been impleaded as Respondent No.1 in this O.A., it is incumbent upon the General Manager, the Divisional Railway Manager and the Divisional Accounts Officer, East Coast Railway to file their counter reply to the O.A. It is also incumbent on the Senior Personnel Officer (Construction) and the Dy. Chief Engineer (Construction), D-II, Bhubaneswar, who have been informed of the proceedings of this O.A. by Respondent No.3, to take necessary steps in this case. But the Respondents as well as the functionaries of the Construction Organization appear to have exhibited their callous attitude in the matter. Even the Respondent No.1, who appeared through the learned Panel Counsel (Railways) Shri P.C.Rath, did not care to file its counter to the Respondents and more surprisingly, MA No.282 of 2007 was filed by Shri P.C.Rath, the learned Panel Counsel) on behalf of Respondent Nos. 2 and 3 urging dismissal of the O.A. on the ground of non-joinder of Construction Organization as party-Respondent in



this O.A. I would like to observe here that when the Union of India through the General Manager of the East Coast Railway, Bhubaneswar, has been made a party, the officers working under the General Manager have been impleaded as party-Respondents only for the purpose of adjudication of the matter in their presence so as to eliminate the scope of any material fact being suppressed from the Tribunal. In view of this, non-joinder of the Construction Organization as party-Respondent is not fatal to the applicant's case, more particularly when the applicant has impleaded the Union of India represented through the General Manager, East Coast Railway, Bhubaneswar, as Respondent No.1 under whom the Construction Organization also operates. In this view of the matter, MA No. 282 of 2007 is rejected.

7. Perusal of the averments contained in the O.A. and the documents filed by the applicant along with the O.A. as well as the documents annexed to MA No. 282 of 2007 clearly reveals that the applicant's father Braja, s/o Mathura was initially appointed on 27.12.1972 as Casual Khalasi. He was conferred with Temporary Status w.e.f. 1.1.1981 and regularized against PCR post w.e.f. 1.4.1984. He retired from Railway service w.e.f. 31.5.1997 (AN) as Senior Khalasi. It also appears that the applicant's father was all through working in the Construction Organization.

Abd

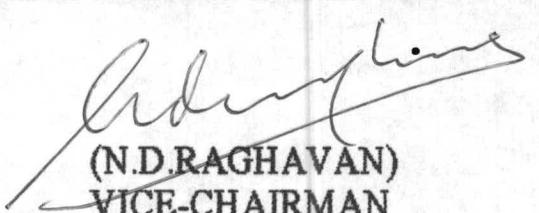
The applicant has stated that the pension as well as family pension were being paid regularly till the death of his father and mother. Annexure 1 shows that his father passed away on 11.10.1997. Annexure 2 shows that his mother Jema Sahu passed away on 18.9.1998. It is the case of the applicant that there were some arrears of pension and family pension and GPF amount due to be paid by the Respondent-Railways. Annexure 4 is the legal heir certificate showing that after the death of his parents, the retired Railway employee and his spouse, the applicant and his two elder sisters are the legal heirs who are entitled to receive the said retirement benefits. Claiming such benefits the applicant appears to have made a representation on 2.5.2003 (Annexure 5) which, according to him, has not yet been disposed of. Respondent No.1, though appeared through the learned Panel Counsel (Railways), has not filed any counter disputing any of the aforesaid facts. Respondent Nos. 2 and 3, without entering appearance in the case, have chosen to file an MA for deletion of their names from the OA. They have also not disputed any of the aforesaid facts in the said MA. ^{8. *lhd*} In this view of the matter, by application of principle of non-traverse, the facts averred by the applicant in the O.A., which are supported by documentary evidence, have to be accepted. As the applicant has not specifically mentioned nor has he produced documents showing the exact amounts of



arrears of pension and GPF, this Tribunal is unable to determine the entitlement of the applicant and to give direction to the Respondents to grant the same to the applicant.

9. (a) In consideration of all the above, I direct the Respondents as well as the Senior Personnel Officer, Construction and the Dy. Chief Engineer (Construction) D-II, Bhubaneswar, under whom the applicant's father was working, to carefully examine the claim of the applicant and pass a speaking order and communicate the same to the applicant. If the arrears of pension and family pension and GPF amount, etc. are found payable to the applicant, the same should be paid along with interest at 12% per annum from the date the same became payable till the date of actual payment. The entire exercise shall be completed within a period of 60 (sixty) days from the date of receipt of copy of this order. The applicant shall personally communicate the copies of this order to all the Respondents as well as to the Senior Personnel Officer, Construction and the Dy. Chief Engineer (Construction), D-II, Bhubaneswar, for necessary compliance.

(Q. (a)) In the result, the Original Application is allowed in terms of the above observation and directions. No costs.


(N.D. RAGHAVAN)
VICE-CHAIRMAN